IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1092 OF 2005
IN
WRIT PETITION NO. 412 OF 1994

Swastik Rubber Products Ltd. .. Applicant

vs.

1. Shri Shrikrishna Dhondiram Gaikwad and anr. .. Respondents

None for the applicant.

CORAM: B.H. MARLAPALLE, J.

Date : July 07, 2005.

P.C.:

1. Writ Petition No.412 of 1994 came to be dismissed for non prosecution on 27/1/2004 and, therefore, this application for restoration of the said petition. As per the office note this application is beyond time by one year and 45 days. There is no separate application filed for condonation of delay though there is a prayer incorporated in this application to that effect. If regards be had to paragraph 2 of this application, there is no justification for the learned Advocate to wait for more than one year to apply for restoration and there

is no further explanation provided to condone the delay. It would be relevant to reproduce the order passed by this court on 5/1/2004 in W.P. No.412 of 1994:-

> "Advocate for petitioner is absent. List the matter on next week, first on board. It is made clear that if he remains absent on the next date, matter is likely to be dismissed for non prosecution."

1A. On 27/1/2004 the learned Advocate for the petitioner again remained absent and, therefore, this court had no choice but to pass the following order:-

> "Advocate for petitioner absent. He was absent on 5/1/2004 when the matter was called out. On that day it was made clear that if he remains absent on the next date, the matter would likely to be dismissed. Hence present Writ Petition is dismissed for non prosecution."

2. On the face of these circumstances, there is no case made out to entertain this application and, therefore, the same is hereby rejected.

(B.H. Marlapalle,J.)